

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DEMITRE EDWIN COPPOCK,

Defendant.

Case No. 3:18-cr-00022-RRB

**ORDER DENYING
MOTION TO SUPPRESS EVIDENCE**

I. INTRODUCTION

Defendant Demitre Coppock renews his motion to suppress evidence.¹ He claims that the warrant used to search his business premises was not supported by probable cause.² Defendant also requested an evidentiary hearing to hear the recordings of his conversation with arresting agents to determine whether the warrant application was misleading.³ However, Defendant included the audio recordings of his arrest with his second motion to suppress evidence.⁴ He also included a copy of the search warrant application, 3:18-mj-00213-DMS, and photos as Exhibits 2–4.⁵

¹ Dkts. 42; 37.

² Dkt. 42 at 1.

³ See Dkt. 40.

⁴ See Dkt. 46.

⁵ Dkts. 42-1; 42-2; 42-3; 42-4.

The government opposes the motion to suppress and the request for an evidentiary hearing.⁶ The government submitted, under seal, as exhibits: Anchorage Police Department (APD) reports, text messages between the defendant and an off-duty police officer, and Bureau of Alcohol, Tobacco, and Firearms (ATF) Special Agents' Reports of Investigation. All, of course, are available to Defendant.

II. BACKGROUND

Defendant is charged in Counts 1 and 2 with felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2), in Count 3 with possession with intent to distribute methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A), and in Count 4 of possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A)(i).⁷

A. Facts

Count 1 arises from a firearms trade with an off-duty APD officer on November 25, 2017.⁸ The officer had posted an internet ad selling a Colt 1911 pistol, and Defendant responded, offering two firearms for trade. Defendant provided photographs of two guns. At this time, Defendant stated that he had a 1911 gun collection and the officer's gun would add to it. The off-duty officer met Defendant at his auto detailing business at

⁶ [Dkt. 47](#); *see also* [Dkt. 39](#).

⁷ [Dkt. 17](#).

⁸ Various documents in this case refer to the date of Defendant's November firearm possession arrest as November 24, 2017, though it is, on occasion, modified by the phrase "on or about." The police reports at [Dkt. 48-1](#) and the indictments at [Dkts. 2, 17](#) list the date of the firearms trade and Defendant's same-day arrest as November 25, 2017. This Order will use the date in the indictments.

230 East Potter Drive, Unit 9, to trade firearms. As the officer drove away from making the trade with Defendant, the officer learned that the firearm Defendant had supplied was stolen. Within minutes, other APD officers arrived at the business and observed Defendant carrying a Colt 1911 pistol and several handgun magazines.

Defendant was indicted on February 20, 2018, with one count of felon in possession of a firearm.⁹ An arrest warrant issued and ATF agents executed it at Defendant's business on April 2, 2018. Based on agents' observations and Defendant's statements on April 2, 2018, as well as Defendant's November 2017 statements regarding his 1911 collection, etc., Special Agent Foreman applied for a search warrant of the truck and the business.¹⁰

Thereafter, a superseding indictment was filed charging Defendant with a second count of felon in possession of a firearm, one count of possession with intent to distribute controlled substances, and one count of possession of a firearm in furtherance of a drug trafficking crime.¹¹

B. Defendant's Motion to Suppress

The search warrant in question specified two places to search, the Subject Premises at 230 E. Potter Drive, Unit 9 (Defendant's business), and the Subject Vehicle, the red Chevrolet truck that Defendant had been driving on November 25, 2017, and April 2, 2018. Defendant claims that the search warrant authorizing the search of his

⁹ Dkt. 2.

¹⁰ Dkt. 42-1.

¹¹ Dkt. 17.

business on April 2, 2018, was not supported by probable cause. He does not dispute the validity of the warrant as to the search of his vehicle.¹²

On this basis, Defendant argues that this Court should exclude evidence found at the business. ATF agents' reports indicate that they seized from the business: a large quantity of marijuana; a substance that field-tested positive for methamphetamine weighing 94 grams including packaging; bullets and casings; and a Beretta .380 caliber pistol.¹³ Defendant does not appear to contest the seizure of the Springfield XD 9 mm handgun found in the truck.¹⁴

C. Government's Opposition

The government contends that, under the "totality of the circumstances," probable cause existed to support the search of the business.¹⁵ The government argues that probable cause for issuance of the warrant was supported by events on both November 25, 2017, and on April 2, 2018, as well as by statements made by Defendant. The government argues that the following facts support a finding that it was likely agents would find evidence of a crime on the business premises.

In November 2017, Defendant sent photos of two guns to the off-duty officer.¹⁶ At that time, Defendant told the off-duty officer that he had a "1911 collection" and the new Colt 1911 would add to it.¹⁷ During the trade on November 25, 2017,

¹² Dkt. 37 at 4 ("[P]robable cause existed to search the red truck . . .").

¹³ Dkts. 47; 48-4.

¹⁴ Dkts. 37; 42.

¹⁵ Dkt. 47 at 5-6.

¹⁶ Dkts. 47 at 6; 42-1 at 4, ¶ 7.

¹⁷ Dkts. 47 at 6; 42-1 at 4, ¶ 8.

Defendant walked out of his business with the gun he intended to trade.¹⁸ After the trade, when arresting officers responded, Defendant came out of his business carrying his new Colt 1911 and also eight handgun magazines.¹⁹ A subsequent search, in December 2018, of the truck Defendant had driven to his business on November 25, 2018, produced firearm accessories, ammunition, and 9 hydrocodone pills.²⁰

On April 2, 2018, when agents next arrived at Defendant's business to serve the arrest warrant, agents observed firearm paraphernalia in the same truck, and a large safe inside Defendant's business.²¹ Agents reported that, at his April 2, 2018 arrest, Defendant stated he had researched the law and he believed he could possess firearms at his place of business.²² He also stated that "DUI and drug charges are not what keep you from owning guns."²³

With all this in mind, the agents applied for the search warrant in question.

III. ANALYSIS

A. The Evidence Supporting a Finding of Probable Cause Was Not Stale

Defendant argues that by April 2, 2018, the above circumstances from November 2017 that suggest he possessed firearms in his business had become stale.²⁴ Defendant asserts, without specificity, that "Agent Foreman wrote nothing in her affidavit

¹⁸ Dkt. 47 at 6.

¹⁹ Dkts. 47 at 6; 42-1 at 4-5, ¶ 9.

²⁰ Dkts. 47 at 7; 42-1 at 5, ¶ 10.

²¹ Dkts. 37 at 4-5; 47 at 4.

²² Dkt. 47 at 3-4; *see* Dkt. 37 at 2.

²³ Dkt. 37 at 2 (internal quotation omitted).

²⁴ *Id.* at 4-5.

indicating any reason to believe a 1911 collection or any other firearm would be found in Mr. Coppock's business.”²⁵

However, a review of the warrant shows that Agent Foreman included facts from ATF agents' observations on April 2, 2018. The warrant states that used steel shooting targets were in the bed of the truck parked at the business when ATF officers arrived.²⁶ In plain view on the rear passenger seat, a black plastic case similar to one used to hold and transport firearms was sticking out of a backpack pocket.²⁷ Because agents decided to impound and apply for a search warrant for the vehicle, an agent entered the business to get keys to the truck.²⁸ That agent saw a large safe inside the business.²⁹ The warrant also reported that on April 2, 2018, Defendant stated that he was allowed to keep firearms at his business and that he possessed a bill of sale for the gun he traded in November 2017.³⁰

Prior history of criminal conduct cannot, on its own, give rise to probable cause that the individual currently possesses contraband or evidence of a crime.³¹ However, even older information can contribute to a finding of probable cause if it is part of a “continuing pattern” or if there are “other good reasons [to believe] that the items to be seized are still on the premises.”³²

²⁵ *Id.* at 5.

²⁶ Dkt. 42-1 at 5, ¶ 12.

²⁷ *Id.*

²⁸ Dkt. 42-1 at 5, ¶ 13.

²⁹ Dkt. 42-1 at 5–6, ¶ 13.

³⁰ Dkt. 42-1 at 6, ¶ 13.

³¹ Dkt. 37 at 4; *Beck v. Ohio*, 379 U.S. 89, 96–97 (1964).

³² Dkt. 47 at 7; *United States v. Gann*, 732 F.2d 714, 722 (9th Cir. 1984).

Here, a continuing pattern did exist. Additionally, there were “good reasons” for the magistrate judge to determine that the items to be seized were at Defendant’s business. First, the truck was associated with Defendant and the business on both dates, and gun paraphernalia was found in the truck on both dates. The truck was parked at the business on both dates. Defendant appeared to be walking to the truck from the business when he was arrested in November 2017 holding the Colt 1911 and eight handgun magazines. The subsequent search of the truck in December 2017 turned up gun accessories and ammunition.

Then, on April 2, 2018, Defendant admitted he was driving the truck (though he denied owning it). Agents observed targets and what looked like a gun case in the truck when they served the federal arrest warrant on April 2, 2018. Defendant is not contesting the validity of the April 2, 2018, search of the truck.

Second, Defendant’s own statements on April 2, 2018, are strong indicators that he possessed guns at his business in April. The warrant reports that Defendant told agents “he had researched federal law and that federal law allowed him to keep firearms at his place of business.”³³ Defendant argues that it was disingenuous of the agent to fail to provide the context of this statement. Defendant asserts, without support in the form of a sworn declaration or affidavit or otherwise, that when he made these statements, he meant them as a protest against what he viewed as an erroneous arrest for misconduct involving weapons on November 25, 2017.³⁴ However, from the perspective of a law enforcement

³³ Dkt. 42-1 at 3, ¶ 5.

³⁴ Dkt. 37 at 2.

officer, it would be reasonable to conclude that if the defendant believed he was entitled to possess firearms at his business on one occasion, he likely still held that belief and might act on it.

Defendant seems to suggest that, due to an audio recording error at his April 2, 2018 arrest, there can be no way to reasonably conclude that Defendant indicated he possessed guns in his business on that date, because agents failed to record the entirety of his conversation with them. However, Defendant fails to support his allegation that Agent Foreman made material and intentional omissions or misstatements in the search warrant application. He only argues (1) that the application lacked adequate probable cause; and (2) that his relevant statement on April 2, 2018, cannot be used to support probable cause.³⁵ For this assertion, Defendant relies only on his subjective, after-the-fact, and self-serving interpretation of his own statement.

Additionally, Defendant does not explain why his statement that he possessed a bill of sale for the stolen firearm would not support a search of the business for, among other things, paperwork. Under these facts, the magistrate judge certainly could consider Defendant's April 2, 2018, statement that he was allowed to possess guns at his business as part of the totality of the circumstances in making her probable cause determination.

Moreover, because the warrant application included many of the facts about Defendant's previous arrest for possessing the stolen firearm, one reasonably could

³⁵ [Dkt. 37 at 2.](#)

conclude that the combination of statements meant that Defendant believed he could, even after his November 2017 arrest, possess guns at the business—and that he did actually have guns there.³⁶

Third, ATF agents saw a large safe, that was in fact a gun safe, inside the business, in plain view. Though the warrant only specified “large safe,” this information, in conjunction with all of the other factors above, provided sufficient probable cause to search the business on April 2, 2018. The evidence of guns, gun accessories, and controlled substances will not be suppressed.

B. Alleged Bad Faith in the Warrant Application

Defendant argues that an evidentiary hearing is necessary to determine whether the *Leon* good faith exception would apply.³⁷ He claims that Agent Foreman acted in bad faith in preparing the warrant. He argues that Agent Foreman “intended to imply that [Defendant’s statements on April 2, 2018] were referring to whether there were presently firearms in the business when, in fact, the context was whether it was legal to possess them four months prior.”³⁸

(1) *Franks* hearing

It appears from this argument that Defendant is requesting a *Franks* hearing to challenge intentionally false or misleading statements in the warrant.

³⁶ Dkt. 42-1 at 4–5, ¶¶ 7–10.

³⁷ Dkt. 40 at 1–2.

³⁸ *Id.* at 2.

There is a presumption of validity with respect to an affidavit supporting a search warrant.³⁹ A *Franks* hearing requires more than a mere allegation of bad faith.⁴⁰

Instead, the Ninth Circuit has established five requirements for a *Franks* hearing:

(1) the defendant must allege specifically which portions of the warrant affidavit are claimed to be false [or which facts were omitted];

(2) the defendant must contend that the false statements or omissions were deliberately or recklessly made;

(3) a detailed offer of proof, including affidavits, must accompany the allegations;

(4) the veracity of only the affiant must be challenged; [and]

(5) the challenged statements must be necessary for probable cause.⁴¹

These requirements flow from *Franks v. Delaware*.⁴² The Fourth Amendment requires a *Franks* hearing only when a defendant makes a substantial preliminary showing that a search warrant affidavit contained material false statements, made either knowingly and intentionally, or in reckless disregard to the truth, which, if excised, would negate the probable cause finding.⁴³ Suppression is required if, at the *Franks* hearing, the defendant establishes the alleged perjury or reckless disregard by a preponderance of the evidence and demonstrates that without the materially false

³⁹ *Franks v. Delaware*, 438 U.S. 154, 155–56 (1978).

⁴⁰ *United States v. Chesher*, 678 F.2d 1353, 1360 (9th Cir. 1982).

⁴¹ *United States v. Perdomo*, 800 F.2d 916, 920 (9th Cir. 1986) (quoting *United States v. DiCesare*, 765 F.2d 890, 894–95 (9th Cir. 1985)).

⁴² 438 U.S. 154 (1978).

⁴³ *Id.*

information, the warrant would not have issued.⁴⁴ This holding has been extended to facts that are deliberately or recklessly omitted from a warrant application, which if included, negate the probable cause determination.⁴⁵

A *Franks* hearing is not available upon a mere request. Instead, the party asking for a *Franks* hearing must establish the material falsehood or the material omission by witness affidavit or by other reliable witness statements.⁴⁶ If such support is missing, the *Franks* hearing applicant must satisfactorily explain why the support is missing.⁴⁷ Conclusory allegations or a desire to cross examine the affiant will not support a *Franks* hearing request.⁴⁸

Defendant's *Franks* hearing request is insufficient. He first must make a substantial preliminary showing that Agent Foreman's omission that, on April 2, 2018, Defendant could have been talking about his *historical* right, rather than his *current* right, to possess guns in his business, was material and at least recklessly made. At the time of making his first Motion to Suppress and requesting an evidentiary hearing, Defendant wanted this Court to "hear the recordings of Agent Foreman's conversation with Mr. Coppock and take evidence as to whether the application was misleading or whether it was approved by essentially a 'rubber stamp.'"⁴⁹ Defendant later provided the audio

⁴⁴ *Id.* at 156.

⁴⁵ *United States v. Stanert*, 762 F.2d 775, 781 (9th Cir. 1985).

⁴⁶ *Franks*, 438 U.S. at 171.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Dkt. 40 at 2.

recordings as exhibits to his second motion.⁵⁰ This Court now has heard the recordings and is unpersuaded that the agent acted in bad faith.

Defendant has not provided any evidence, only his bare assertion, that Agent Foreman intended to mislead the magistrate judge, or that she recklessly disregarded the truth. The warrant application included numerous facts about Defendant's November 2017 arrest.⁵¹ This is inconsistent with Defendant's contention that Agent Foreman intended to obscure the possibility that Defendant's statement referred solely to an incident four months earlier. Moreover, reasonable people could differ in their interpretation of Defendant's statement that he could possess guns at his business, and whether he meant currently on April 2, 2018, or only back when he was previously arrested in November 2017. Defendant has not shown that the agent herself believed that Defendant was talking about the past. Nor has he shown that she intentionally or recklessly failed to include that belief, if it existed.

But even if the description of Defendant's statement were intentionally or recklessly misleading, it is not material. Given all the other facts provided in the warrant application, the totality of the circumstances supported a finding of probable cause even if the Defendant's statement of April 2, 2018, had been accompanied by an explicit explanation that he may have been referring to his November 25, 2017, possession of guns on his business premises.

⁵⁰ See Dkt. 44.

⁵¹ Dkt. 42-1 at 3–4, ¶¶ 7–10.

No evidentiary hearing is necessary because Defendant has not made the substantial preliminary showing required under *Franks*.

(2) Even if the warrant lacked probable cause, the Good Faith Exception allows the seizure

The exclusionary rule is a judicially created remedy designed to compel respect for the Fourth Amendment.⁵² However, evidence obtained under an invalid warrant should not be suppressed if the officer obtaining the warrant or performing the search relied in good faith on the warrant's validity.⁵³ The inquiry is one of objective reasonableness, *i.e.*, "whether a reasonably well-trained officer would have known that the search was illegal despite the magistrate's authorization."⁵⁴ The government has the burden of demonstrating that the good faith exception to the exclusionary rule applies.⁵⁵ An officer's reliance on a defective warrant is not reasonable, *inter alia*, "when the [supporting] affidavit is so lacking in indicia of probable cause that official belief in its existence is objectively unreasonable" or "when the warrant is so facially deficient that executing officers cannot reasonably presume it to be valid (*i.e.*, it fails to specify the place to be searched or the things to be seized)."⁵⁶ Police reliance on a warrant authorizing a search that fails to link the suspect or the criminal activity to the place to be searched is not

⁵² *Davis v. United States*, 564 U.S. 229, 236 (2011).

⁵³ *United States v. Clark*, 31 F.3d 831, 835 (9th Cir. 1994) (citing *United States v. Mendonsa*, 989 F.2d 366, 369 (9th Cir. 1993)).

⁵⁴ *United States v. Leon*, 468 U.S. 897, 922 n.23 (1984).

⁵⁵ *Underwood*, 725 F.3d 1076 at 1085.

⁵⁶ *United States v. Luong*, 470 F.3d 898, 902 (9th Cir. 2006) (citing *Leon*, 468 U.S. at 914, 923; *United States v. Johns*, 948 F.2d 599, 604–05 (9th Cir. 1991)).

objectively reasonable and the good faith exception to the exclusionary rule cannot be invoked.⁵⁷

The *Leon* good faith exception would apply here. There was ample probable cause linking Defendant's business to a crime. The information from November 2017 was not stale. The statements and observations of the truck contents and the large safe on April 2, 2018, indicated a continuing pattern of firearm possession around the truck and the business. The warrant was not facially deficient. It specified the places to be searched and the things to be seized.

Here, even if the search warrant were lacking in probable cause, it was not "so lacking" that it would have been unreasonable for a reasonably well-trained officer to rely on it in good faith.⁵⁸ Therefore, the good faith exception would apply to allow the proceeds of the search to be admitted as evidence.

For all the reasons set forth above, Defendant's Second Motion to Suppress is DENIED.

IT IS SO ORDERED this 12th day of December, 2018, at Anchorage, Alaska.

/s/ Ralph R. Beistline
RALPH R. BEISTLINE
Senior United States District Judge

⁵⁷ *United States v. Hove*, 848 F.2d 137, 139 (9th Cir. 1988).

⁵⁸ *Id.* (a probable cause determination is valid if the "affidavit was sufficient to 'create disagreement among thoughtful and competent judges as to the existence of probable cause'") (citing *United States v. Leon*, 468 U.S. 897, 926 (1984)).